

JOSHUA OSBORNE-KLEIN (WSB #36736)

KRISTEN L. BOYLES (CSB #158450)

Earthjustice

705 Second Avenue, Suite 203

Seattle, WA 98104

(206) 343-7340

(206) 343-1526 [FAX]

josborne-klein@earthjustice.org

kboyles@earthjustice.org

SHELLEY DAVIS (CSB #84539)

VIRGINIA RUIZ (CSB #194986)

Farmworker Justice

1126 – 16th Street, N.W., Suite 270

Washington, D.C. 20036

(202) 293-5420

(202) 293-5427 [FAX]

sdavis@nclr.org

vrui@nclr.org

Attorneys for Plaintiffs

[Complete list of parties on signature page.]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED FARM WORKERS, PESTICIDE)

ACTION NETWORK NORTH AMERICA,)

PINEROS Y CAMPESINOS UNIDOS DEL)

NOROESTE, BEYOND PESTICIDES,)

TEAMSTERS LOCAL 890, FARM LABOR)

ORGANIZING COMMITTEE, AFL-CIO, and)

LUIS GARCIA LOPEZ,)

Plaintiffs,)

v.)

UNITED STATES ENVIRONMENTAL)

PROTECTION AGENCY,)

Defendant.)

Case No. CV08-3595-SBA

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

1 1. This is an action for declaratory judgment and injunctive relief concerning the
2 pesticide diazinon. It arises under and asserts violations of the Federal Insecticide, Fungicide,
3 and Rodenticide Act (“FIFRA”), 7 U.S.C. §§ 136-136y.¹

4 2. Diazinon is a toxic organophosphate pesticide. The American public, including
5 infants and children, are exposed to diazinon that drifts in the ambient air following application
6 and contaminates food and drinking water. Farmworkers are additionally exposed to diazinon
7 when they mix, load, or apply the pesticide in fields or re-enter treated fields after application.
8 Diazinon contaminates the environment and poisons wildlife including threatened and
9 endangered species.

10 3. The United States Environmental Protection Agency (“EPA”) has recognized that
11 diazinon uses pose considerable risks to farmworkers and wildlife. However, without
12 completing the required ESA consultations, EPA determined that diazinon uses are eligible for
13 reregistration under FIFRA because the benefits outweigh the risks. In reaching this
14 reregistration determination, EPA failed to put the burden of proving reregistration eligibility on
15 the pesticide registrants and, instead, relied on incomplete and inaccurate risks and benefits
16 assessments that significantly understate the risks of diazinon uses and exaggerate the benefits of
17 the pesticide.

18 4. Plaintiffs seek a judgment declaring that EPA acted arbitrarily, capriciously, and
19 in violation of FIFRA in determining that diazinon was eligible for reregistration and in
20 maintaining the registrations for diazinon. Plaintiffs also seek an injunction that (1) requires
21 EPA to make new reregistration eligibility decisions for diazinon based on a balancing of risks
22 and benefits under FIFRA’s unreasonable adverse effects standard that fully incorporate the
23 health, environmental, economic, and social risks and benefits of each diazinon use; (2) prohibits

24 ¹ On May 27, 2008, plaintiff Beyond Pesticides sent a 60-day notice of intent to sue EPA for an
25 additional violation of the Endangered Species Act (“ESA”), 16 U.S.C. §§ 1531-1544, which
26 EPA received on June 2, 2008. Unless EPA takes steps to correct its illegal actions, plaintiffs
27 will amend this complaint to add a claim for a violation of the ESA upon expiration of the
28 mandatory 60-day period.

1 EPA from reregistering uses of diazinon unless the pesticide registrants prove that the benefits of
 2 the pesticide use outweigh the specific risks associated with that use; and (3) imposes interim
 3 protective measures to prevent harm to farmworkers, children, other bystanders in agricultural
 4 communities near areas where diazinon is used until EPA brings its diazinon registrations into
 5 compliance with the law.

6 JURISDICTION, VENUE, AND INTRADISTRICT ASSIGNMENT

7 5. This action is brought pursuant to section 16(a) of FIFRA, 7 U.S.C. § 136n(a).
 8 This Court has jurisdiction pursuant to 7 U.S.C. § 136n(a), and 28 U.S.C. § 1331.

9 6. Venue is properly vested in this Court under 28 U.S.C. § 1391(e) as a number of
 10 the plaintiffs reside in this district and many of the consequences of the defendant's violations of
 11 the law giving rise to the claims occurred or will occur in this district.

12 7. This case is properly assigned to the San Francisco/Oakland Division under Civil
 13 L.R. 3-2(c) because at least one of the plaintiffs is located in San Francisco County.

14 PARTIES

15 8. The plaintiffs in this action are:

16 A. United Farm Workers ("UFW"), the nation's oldest and largest farmworker
 17 membership organization. UFW is headquartered in California and serves farmworkers in
 18 offices all across the country including offices in Salinas and Santa Rosa, California. UFW has
 19 represented farm workers for more than 40 years and currently has more than 27,000 members,
 20 many of whom are migrant and seasonal farmworkers. UFW's mission is to protect and expand
 21 farmworkers' labor rights, including rights pertaining to health and safety issues. UFW works to
 22 protect the health and safety of farmworkers from occupational injuries, including injuries
 23 caused by exposure to diazinon and other pesticides.

24 B. Pesticide Action Network North America ("PANNA"), a San Francisco-based
 25 non-profit organization that serves as an independent regional center for Pesticide Action
 26 Network International, a coalition of over 600 public interest organizations in more than 90
 27

1 countries. For more than 20 years, PANNA has worked to replace hazardous and unnecessary
2 pesticide uses with ecologically sound pest management across North America. PANNA
3 provides scientific expertise, public education, and access to pesticide data and analysis, policy
4 development, and other support to its approximately 225 member organizations. PANNA has
5 approximately 2,700 individual members nationwide and approximately 90 organizational
6 members in California alone. PANNA's U.S. membership includes a number of groups who
7 directly represent or advocate on behalf of farmworkers and whose membership includes
8 farmworkers and persons living on or near farms. PANNA submitted comments to EPA on the
9 2006 organophosphates cumulative risk assessment and the 2002 interim reregistration eligibility
10 decision for diazinon.

11 C. Pineros y Campesinos Unidos del Noroeste (Northwest Treeplanters and
12 Farmworkers United or "PCUN"), based in Woodburn, Oregon, the state's only union of
13 farmworkers, nursery, and reforestation workers. Its mission is to establish better working and
14 living conditions for its members, who work on crops treated with diazinon, and live in
15 communities where this pesticide drifts and is tracked in following application.

16 D. Beyond Pesticides, a nonprofit membership organization that serves a nationwide
17 network of individuals and groups working to increase the safe use of pesticides and reduce or
18 end the use of dangerous chemicals such as diazinon. Beyond Pesticides is based in Washington,
19 D.C., and has more than 2,000 individual and organizational members in California and other
20 states. The organization advocates on behalf of farmworkers, individuals, and communities
21 exposed to pesticides such as diazinon and also seeks to protect wildlife and ecosystems from the
22 harmful effects of diazinon and other pesticides. Beyond Pesticides' primary goal is to assist
23 individuals and organizations in identifying the hazards of pesticides, providing information on
24 safer alternatives, and promoting policy changes that increase the protections to humans and the
25 environment from dangerous pesticides. Beyond Pesticides has long campaigned for more
26 stringent regulation of diazinon. For example, on December 17, 2002, Beyond Pesticides
27 submitted comments that critiqued the EPA's diazinon interim reregistration decision. Beyond
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1 Pesticides has also published fact sheets on the dangers of diazinon and has orchestrated public
2 letter writing campaigns urging EPA to cancel diazinon uses.

3 E. Teamsters Local 890, a union founded in 1943 that represents approximately
4 10,000 workers in California and Arizona, including 2,000 agricultural workers in the Salinas
5 Valley, Oxnard area, Huron area, and Imperial Valley in California, as well as the Yuma area of
6 Arizona. The Union negotiates contracts to improve the members' wages and working
7 conditions and works to protect its members from pesticide exposures and provide health care to
8 farm workers and their families. Local 890's members include workers who have harvested and
9 will continue to harvest vegetables treated with diazinon. Local 890's members and their
10 families also live and go to school in areas where diazinon drifts and settles.

11 F. Farm Labor Organizing Committee, AFL-CIO ("FLOC"), a national union that
12 represents migrant and seasonal farmworkers. It was founded in 1968 and is based in Toledo,
13 Ohio. FLOC's mission is to organize farmworkers so that they can secure more power to
14 improve their working conditions, including reducing their exposure to pesticides. FLOC
15 currently has approximately 12,000 members in Ohio, Michigan, North Carolina, and Virginia.
16 FLOC members work with many crops that are registered to receive diazinon treatments,
17 including apples, blueberries, cucumbers, onions, peppers, potatoes, strawberries, and tomatoes.

18 G. Luis Garcia Lopez, an individual farmworker who has supported himself and his
19 family for many years by working in agricultural fields in California. He has been exposed to
20 diazinon and other pesticides while working in and around fields in Monterey County. Mr.
21 Lopez plans to continue working in agriculture and is at risk of future exposure to diazinon and
22 other pesticides.

23 9. Plaintiffs have been and will continue to be injured when their members mix,
24 load, and apply diazinon for agricultural purposes; prune, thin, or harvest crops that contain
25 residues of diazinon; and work or live in areas where diazinon drifts and settles. Every year,
26 plaintiffs' members are exposed to diazinon at levels that may cause poisoning. The continued
27 exposure of the plaintiffs' members to the harmful effects of diazinon are a direct result of EPA's
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1 decisions to reregister diazinon uses.

2 10. Plaintiff Beyond Pesticides and its members live, use, and recreate in areas near
3 where diazinon is applied or where diazinon has traveled. Beyond Pesticides and its members
4 have professional, economic, aesthetic, and recreational interests that have been and will
5 continue to be injured by the reregistration of diazinon uses and the impacts that this pesticide
6 has and will continue to have on beneficial insects and threatened and endangered species.

7 11. The past, present, and future enjoyment of these interests by plaintiffs and their
8 members have been, are being, and will continue to be irreparably harmed by EPA's disregard of
9 its statutory duties and by the unlawful injuries imposed on farmworkers, children and other
10 bystanders, and the environment.

11 12. The aesthetic, conservation, recreational, commercial, and scientific interests of
12 plaintiffs and their members in minimizing harm to people and the environment from the use of
13 diazinon, as well as in the compliance with environmental law by federal agencies, have been,
14 are being, and, unless the relief prayed for is granted, will continue to be directly and adversely
15 affected by the failure of defendants to comply with the law.

16 13. The defendant in this action is the United States Environmental Protection
17 Agency, an agency of the United States charged with registering and reregistering pesticides
18 under FIFRA and with ensuring that the authorized pesticide uses will not pose unreasonable
19 risks to humans or the environment.

20 BACKGROUND

21 I. STATUTORY FRAMEWORK FOR REGISTERING AND REREGISTERING 22 PESTICIDES

23 A. Federal Insecticide, Fungicide, and Rodenticide Act Requirements

24 14. FIFRA establishes a registration scheme for pesticides. Under FIFRA, a pesticide
25 may generally not be sold or used in the United States unless it has an EPA registration for a
26 specified use. 7 U.S.C. § 136a(a). To register or reregister a pesticide, EPA must determine
27 that:

- (A) its composition is such as to warrant the proposed claims for it;
- (B) its labeling and other material required to be submitted comply with the requirements of this Act;
- (C) it will perform its intended function without unreasonable adverse effects on the environment; and
- (D) when used in accordance with widespread and commonly recognized practice it will not generally cause unreasonable adverse effects on the environment.

Id. § 136a(c)(5).

15. FIFRA defines “unreasonable adverse effects on the environment” to mean “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide” Id. § 136(bb). In order for EPA to register or reregister a pesticide use, it must find that the use will not pose any unreasonable adverse effects because the benefits of the pesticide uses outweigh the risks.

16. FIFRA also defines “unreasonable adverse effects on the environment” to include any human dietary risk that is not “safe” under the Federal Food Drug and Cosmetic Act (“FFDCA”), 21 U.S.C. §§ 301-394, as amended by the Food Quality Protection Act (“FQPA”), Pub. L. No. 104-170, 110 Stat. 1489 (1996). 7 U.S.C § 136(bb). The FFDCA, as amended, defines “safe” as “a reasonable certainty that no harm will result from aggregate exposure to the pesticide residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.” 21 U.S.C. §§ 346a(b)(2)(A)(i)-(ii).

17. The culmination of the registration process is EPA’s approval of both a registration and a label for the particular pesticide use. FIFRA makes it unlawful to use a pesticide in a manner inconsistent with the label, 7 U.S.C. § 136j(2)(G), or to make any claims that differ substantially from the label, id. § 136j(1)(B).

18. EPA has the authority to cancel a pesticide registration whenever the “pesticide or its labeling or other material required to be submitted does not comply with the provisions of [FIFRA] or, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment” Id. § 136d(b).

1 19. EPA separately categorizes and assesses risks to farmworkers, children and
2 bystanders (non-occupational risks), and wildlife. For farmworker risks, EPA typically uses a
3 methodology that combines exposure estimates, toxicity assessments, and uncertainty factors to
4 determine whether a particular pesticide use poses a “risk of concern” to farmworkers, which it
5 has also called an “unacceptable risk.” When EPA determines that a pesticide use presents a risk
6 of concern to farmworkers, it generally prescribes mitigation measures including use of personal
7 protective equipment (such as chemical resistant clothing and respirators), and engineering
8 controls (such as closed pesticide mixing, loading, and application systems designed to reduce
9 contact with the poisons).

10 20. For children and bystanders, both FIFRA and the FFDCA require EPA to evaluate
11 potential exposures from dietary sources and from other non-occupational routes. EPA generally
12 uses the “reasonable certainty of no harm” standard set forth in the FFDCA to assess dietary
13 risks to children and bystanders; however, EPA typically does not consider or assess the risks to
14 children and bystanders from exposure to pesticides that drift into communities following
15 application under either the FIFRA or FFDCA standard.

16 21. For wildlife, EPA typically establishes ecological risks of concern based on
17 laboratory toxicity studies and environmental fate modeling. When EPA identifies a risk of
18 concern for wildlife, the agency sometimes prescribes mitigation measures including no-
19 application buffer zones around sensitive areas, reductions in permitted number of seasonal
20 applications, and reductions in maximum application rates.

21 22. Under FIFRA’s risk-benefit standard, EPA cannot allow pesticide uses that result
22 in human or ecological risks to persist unless the pesticide registrant proves that, considering all
23 risks and benefits, the benefits of the pesticide use outweigh the risks.

24 23. EPA has no regulation or policy establishing a uniform process for assessing the
25 benefits of pesticide uses that pose risks of concern to humans and/or wildlife. Expert bodies,
26 such as the National Academy of Sciences, have recommended that EPA develop such a policy
27 to avoid arbitrary and unprincipled risk-benefit decisionmaking under FIFRA. In the absence of
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1 such a regulation or policy, EPA staff compiles information on the risks and benefits of
2 pesticides on an *ad hoc* basis.

3 II. DIAZINON

4 A. History and Usage

5 24. Diazinon is an organophosphate insecticide that was first registered for use in
6 1956. Like other organophosphate pesticides, diazinon originates from nerve gases developed by
7 the Nazis during World War II.

8 25. Today, diazinon is one of the most widely used organophosphate insecticides in
9 the United States. EPA estimates that total annual domestic usage of diazinon was over 13
10 million pounds of active ingredients between 1987 and 1997. Diazinon is currently registered
11 for use on a wide variety of crops including almonds, apples, apricots, beets, beans, blueberries,
12 broccoli, Brussels sprouts, cabbage, caneberries, carrots, cauliflower, celery, chard, cherries,
13 collards, cranberries, cucumbers, endive, figs, filberts, ginseng, kale, lettuce, melons, mustard
14 greens, nectarines, onions, ornamentals, parsley, parsnips, peaches, pears, peas, peppers,
15 pineapples, plums, potatoes, prunes, radishes, rutabagas, strawberries, spinach, tomatoes, trunk
16 wraps, turnips, and watercress.

17 26. In 1989, FWS issued a biological opinion for the then-registered diazinon uses.
18 FWS determined diazinon jeopardized 84 threatened and endangered aquatic species and four
19 listed avian species. Diazinon IRED at 31. FWS prescribed mitigation measures to avoid
20 jeopardizing such species. Diazinon IRED at 31. On information and belief, EPA never
21 implemented the mitigation prescribed in the 1989 biological opinion. Diazinon IRED at 32.

22 27. Pursuant to court orders, EPA has begun to initiate ESA section 7(a)(2)
23 consultations on the effects of diazinon on listed salmonid populations, the California red-legged
24 frog, and the Barton Springs salamander. However, EPA has allowed diazinon uses to continue
25 that may affect those species even though the ESA consultations are not complete.

1 B. Toxicity and Environmental Fate

2 28. Diazinon is toxic to humans. Like other organophosphates, diazinon causes
3 systemic illnesses by inhibiting the ability to produce cholinesterase, an enzyme necessary for
4 the proper transmission of nerve impulses. Symptoms of cholinesterase inhibition include
5 muscle spasms, confusion, dizziness, loss of consciousness, seizures, abdominal cramps,
6 vomiting, diarrhea, cessation of breathing, paralysis, coma, and death. Scientific studies also
7 associate diazinon exposures with several other ailments including endocrine disruption, birth
8 defects, nerve damage, liver damage, asthma, gestational diabetes, and non-Hodgkin's
9 lymphoma.

10 29. Diazinon has both lethal and sub-lethal effects on wildlife. Birds, particularly
11 grazing fowl like ducks and geese, are highly susceptible to diazinon poisoning, and diazinon has
12 been linked to hundreds of reported bird kills. Indeed, according to EPA's Ecological Incident
13 Information System, diazinon has caused the second largest number of total known incidents of
14 bird mortality of any pesticide. Diazinon is also lethal to aquatic life and, according to peer-
15 reviewed studies, low concentrations of diazinon in surface water can have sub-lethal effects on
16 fish, including impairment of homing ability, reproduction, and predator avoidance.

17 30. Diazinon is semi-volatile and can become airborne after application. It has been
18 detected in the air near schools and homes in agricultural communities. For example, air
19 monitoring conducted by the California Air Resources Board in 1998 found detectable levels of
20 diazinon in the air at schools and other monitoring sites in Fresno County, California. A 2006
21 monitoring study PANNA conducted at the South Woods Elementary School in Hastings,
22 Florida, detected diazinon at quantities exceeding levels-of-concern for young children that were
23 derived from EPA data.

24 31. Diazinon is also frequently detected in surface waters. According to EPA,
25 "[d]iazinon was the most frequently detected insecticide in surface water monitoring studies . . .
26 ." Diazinon IRED at 11. Numerous waterbodies are listed as impaired pursuant to section
27 303(d) of the Clean Water Act, 33 U.S.C. § 1313(d), due to contamination of diazinon from
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1 agricultural sources.

2 C. EPA's Reregistration Eligibility Decisions

3 32. EPA issued an interim reregistration eligibility decision for diazinon on July 31,
4 2002 ("Diazinon IRED"), which it revised on May 13, 2004 ("IRED Revision"). In those
5 decisions, EPA identified many "risks of concern" to farmworkers and wildlife resulting from
6 diazinon uses and prescribed mitigation to reduce these risks, including use of personal
7 protective equipment (such as chemical resistant clothing and respirators), use of engineering
8 controls (such as closed pesticide mixing, loading, and application systems designed to reduce
9 contact with the poisons), use restrictions, and reductions in maximum application rates. EPA
10 acknowledged that such mitigation would not eliminate the risks of concern to farmworkers and
11 wildlife but nonetheless concluded that such uses were eligible for reregistration under FIFRA.

12 33. Specifically, EPA found that all diazinon mixing, loading, and application
13 scenarios presented "unacceptable" risks of concern to farmworkers, even if EPA required use of
14 personal protective equipment. Diazinon IRED at 18. And even with implementation of
15 engineering controls, EPA found that 118 of the 136 short-term exposure scenarios presented
16 risks of concern to farmworkers who mix, load, or apply diazinon. See Diazinon IRED at 19-21.

17 34. EPA also concluded that diazinon uses posed "post-application" risks of concern
18 to farmworkers who come into contact with diazinon residues on crops following application.
19 EPA determined that up to 18-day "re-entry intervals" (period of time in which workers may not
20 enter fields treated with diazinon) and 45-day "pre-harvest intervals" (period of time in which
21 harvesting activities are prohibited following application) were needed to eliminate risks of
22 concern resulting from post-application activities. Diazinon IRED at 22-23.

23 35. EPA found that diazinon uses resulted in risks of concern to birds, mammals,
24 aquatic species, and threatened and endangered species. Diazinon IRED at 28-32. According to
25 the agency, "[d]iazinon has caused widespread and repeated mortality of birds [and that
26 m]ortality is likely to continue in the future if diazinon continues to be used on sites where birds
27

1 can be exposed.” Diazinon IRED at 31. EPA likewise acknowledged that “[d]iazinon is highly
2 toxic to bees and other beneficial insects on an acute contact basis,” is “moderately toxic to very
3 highly toxic to freshwater fish,” and “is very highly toxic to aquatic invertebrates on an acute
4 basis” Diazinon IRED at 26.

5 36. While EPA prescribed some mitigation to reduce farmworker and wildlife risks,
6 in many cases the agency carved out exceptions to the mitigation for specific diazinon uses. For
7 example, EPA cancelled all granular registrations of diazinon *except* for use on lettuce in
8 California and Arizona and for two current local registrations held by Washington and Oregon
9 for control of the cranberry girdler. IRED Facts at 3. Likewise, EPA eliminated aerial
10 application for all uses *except* for one application per crop for lettuce. IRED Facts at 3. EPA
11 similarly deleted foliar application on all vegetable and fruit crops *except* for leafhopper on
12 honeydew melons in California and one application per crop for lettuce. IRED Facts at 3. And
13 EPA required closed cabs for motorized ground equipment application *except* for applications to
14 apples and lettuce. IRED Revision at 2.

15 37. EPA’s primary justification for allowing diazinon risks of concern to persist, and
16 for exempting certain uses from the general mitigation measures prescribed in the IRED, was its
17 assertion that the benefits of diazinon to growers outweigh the risks from such uses. However,
18 EPA’s conclusion that diazinon uses provided important benefits to growers is not substantiated
19 by the facts. For example, EPA conceded that only five percent of the honeydew melon crop is
20 treated with diazinon. Diazinon IRED at 6. The low usage of diazinon indicates that honeydew
21 growers have found efficacious alternatives to diazinon and that cancellation of the honeydew
22 use would not significantly affect grower revenues. Yet EPA allowed diazinon use on honeydew
23 to continue and, in the 2004 IRED Revision, extended the phase-out for foliar applications on
24 honeydew melons indefinitely. IRED Revision at 1.

25 38. Indeed, EPA assessed benefits for only a limited number of crops—those with
26 five percent or more of total acreage receiving diazinon treatments. Diazinon IRED at 42. Using
27 this cut-off, EPA did not conduct a benefits assessment for diazinon use on apples. Diazinon
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1 IRED at 42. Nonetheless, EPA concluded that diazinon uses on apples are eligible for
2 reregistration, Diazinon IRED at 42, and, in the 2004 Revision, exempted apples from the
3 enclosed cab mitigation it prescribed for all other diazinon uses, IRED Revision at 1.

4 39. EPA's failure to consider the benefits of many diazinon uses was compounded by
5 the agency's failure to assess several important factors bearing on the risks that the pesticide
6 poses to humans. For example, EPA failed to consider diazinon exposures to children and
7 bystanders that occur when the pesticide drifts from the fields into homes, schools, and
8 playgrounds following application; EPA only considered child and bystander exposures from
9 food and drinking water contamination. See Diazinon IRED at 36-37. Both FIFRA and the
10 FFDCA require EPA to assess child and bystander exposures from pesticide drift; however, EPA
11 did not examine such exposures under either FIFRA's "unreasonable adverse effects" standard or
12 the FFDCA's "reasonable certainty of no harm" standard.

13 40. EPA failed to consider many other critical factors bearing on diazinon's
14 reregistration eligibility, including but not limited to (a) the risks to humans and wildlife from the
15 diazinon degradates, which EPA acknowledged could pose additional risks to both humans and
16 wildlife; (b) the risks to humans and wildlife resulting from the endocrine disrupting properties
17 of diazinon; (c) the post-application risks to farmworkers from nut tree and cut flower uses of
18 diazinon; (d) waterbody listings under section 303(d) of the Clean Water Act caused by diazinon
19 contamination from agricultural sources; (e) the acute toxicity of diazinon to estuarine and
20 marine fish and invertebrates; and (f) the sub-lethal effects of diazinon on fish.

21 41. The Diazinon IRED was called "interim" because EPA still had to complete a
22 cumulative risk assessment for all organophosphates and make appropriate adjustments in food
23 tolerances in order to comply with the FQPA. On July 31, 2006, upon completing its
24 Organophosphate Cumulative Risk Assessment, EPA re-affirmed its reregistration eligibility
25 decisions for diazinon without change. It concluded that the Cumulative Risk Assessment
26 compelled no changes in the Diazinon IRED and that the diazinon uses covered by the IRED
27 continue to be eligible for reregistration. EPA Memorandum Finalizing IREDs for
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1 Organophosphate Pesticides (July 31, 2006). In making this determination, EPA did not address
 2 or incorporate new data that had been submitted to the agency following completion of the IRED
 3 on the risks and benefits of diazinon.

4 CLAIMS FOR RELIEF

5 FIRST CLAIM FOR RELIEF

6 Violation of FIFRA:

7 Failure to Consider All Factors Necessary to Evaluate “Unreasonable Adverse Effects” 8 From Reregistering Diazinon

9 42. In order to register or reregister a pesticide use, EPA must determine that the use
 10 “will not generally cause unreasonable adverse effects on the environment.” 7 U.S.C.
 11 §§ 136a(c)(5). FIFRA defines “unreasonable adverse effects on the environment” to mean “any
 12 unreasonable risk to man or the environment, taking into account the economic, social, and
 13 environmental costs and benefits of the use of any pesticide” *Id.* § 136(bb). In order to
 14 satisfy this standard, EPA must consider all relevant health, environmental, economic, and social
 15 risks and benefits of the pesticide use and determine that the benefits outweigh the risks. The
 16 pesticide registrant bears the burden of proving that the benefits of a pesticide use outweigh the
 17 risks.

18 43. In determining that diazinon uses are eligible for reregistration under FIFRA, and
 19 in maintaining the diazinon registrations, EPA failed to place the burden of proving registration
 20 eligibility on the pesticide registrants and failed to conduct a complete assessment of the risks
 21 and benefits of diazinon uses. The critical omissions in EPA’s diazinon assessments include but
 22 are not limited to EPA’s failure to consider and adequately assess: (a) risks to children and
 23 bystanders from diazinon that drifts into communities following application; (b) risks to humans
 24 and wildlife from the toxic degradates of diazinon; (c) risks to humans and wildlife from the
 25 endocrine disrupting properties of diazinon; (d) risks to estuarine and marine fish and
 26 invertebrates from diazinon runoff; (e) the sub-lethal effects of diazinon on wildlife; (f) surface
 27 waters listed as impaired due to diazinon contamination from agricultural sources; and
 28 (g) benefits of diazinon on crops such as apples for which less than five percent of total acreage

1 receives diazinon treatments.

2 44. Because EPA failed to consider and adequately assess many important factors
3 bearing on the risks and benefits of diazinon, including but not limited to those listed above, EPA
4 lacked a basis for determining that the benefits of diazinon uses outweigh the risks. By failing to
5 put the burden on the registrants to prove reregistration eligibility and conduct a complete risk-
6 benefit assessment that considers all important factors relevant to diazinon's reregistration
7 eligibility, EPA's decision that diazinon is eligible for reregistration was arbitrary, capricious,
8 and contrary to FIFRA.

9 SECOND CLAIM FOR RELIEF

10 Violation of FIFRA:

11 Failure to Rationally Balance Risks and Benefits of Diazinon Reregistration

12 45. FIFRA defines "unreasonable adverse effects on the environment" to mean "any
13 unreasonable risk to man or the environment, taking into account the economic, social, and
14 environmental costs and benefits of the use of any pesticide" *Id.* § 136(bb). In order to
15 satisfy this standard, EPA must consider all relevant health, environmental, economic, and social
16 risks and benefits of the pesticide use and determine that the benefits outweigh the risks. The
17 pesticide registrant bears the burden of proving that the benefits of a pesticide use outweigh the
18 risks.

19 46. Despite the flaws in EPA's diazinon risk and benefit assessments, EPA admitted
20 that some diazinon uses pose substantial risks to humans and the environment and provide only
21 marginal benefits to growers. EPA proffered no rationale for how these marginal benefits
22 outweigh the substantial risks posed by diazinon. EPA's failure to articulate any rational
23 connection between its risk and benefit findings and its ultimate decision that diazinon uses were
24 eligible for reregistration was arbitrary, capricious, and contrary to FIFRA.

25 PRAYER FOR RELIEF

26 WHEREFORE, plaintiffs pray that this Court:

27 A. Adjudge and declare that EPA acted arbitrarily, capriciously, and contrary to

FIFRA in reregistering uses of diazinon;

B. Order EPA to either cancel diazinon or make a new reregistration eligibility decision for diazinon on an expeditious basis in which EPA: (1) makes unreasonable adverse effects determinations based on full consideration and balancing of environmental, health, economic, and social risks and benefits from diazinon uses, including all risks to children and other bystanders; (2) reregisters a diazinon use only when the pesticide registrants have proved that the health, environmental, economic, and social benefits outweigh the risks; and (3) ensures, based on completed section 7(a)(2) consultations, that the reregistered diazinon uses will not jeopardize the survival and recovery of threatened and endangered species or destroy or adversely modify their critical habitat;

C. Order interim protective measures to prevent harm to farmworkers, children, and other bystanders while EPA makes new reregistration decisions for diazinon;

D. Award plaintiffs UFW, PANNA, PCUN, Beyond Pesticides, Teamsters Local 890, FLOC, and Luis Garcia Lopez their reasonable expenses, costs, and disbursements, associated with this litigation under the Equal Access to Justice Act, 28 U.S.C. § 2412;

E. Award plaintiffs UFW, PANNA, PCUN, Beyond Pesticides, Teamsters Local 890, FLOC, and their counsel Earthjustice and Farmworker Justice only, their reasonable fees, including attorneys' fees associated with this litigation, under the Equal Access to Justice Act, 28 U.S.C. § 2412;

F. Grant plaintiffs such further and additional relief as the Court may deem just and proper.

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Respectfully submitted this 28th day of July, 2008.

/s/ Gregory C. Loarie

GREGORY C. LOARIE (CSB #215859)

Earthjustice

426 - 17th Street, 5th Floor

Oakland, CA 94612

(510) 550-6725

(510) 550-6749 [FAX]

gloarie@earthjustice.org

*Local Counsel for Plaintiffs United Farm Workers,
Pesticide Action Network North America, Pinos y
Campesinos Unidos del Noroeste, Beyond
Pesticides, Teamsters Local 890, and Farm Labor
Organizing Committee, AFL-CIO*

JOSHUA OSBORNE-KLEIN (WSB #36736)

KRISTEN L. BOYLES (CSB #158450)

Earthjustice

705 Second Avenue, Suite 203

Seattle, WA 98104

(206) 343-7340

(206) 343-1526 [FAX]

josborne-klein@earthjustice.org

kboyles@earthjustice.org

SHELLEY DAVIS (CSB #84539)

VIRGINIA RUIZ (CSB #194986)

Farmworker Justice

1126 – 16th Street, N.W., Suite 270

Washington, D.C. 20036

(202) 293-5420

(202) 293-5427 [FAX]

sdavis@nclr.org

vrui@nclr.org

*Attorneys for Plaintiffs United Farm Workers,
Pesticide Action Network North America, Pinos y
Campesinos Unidos del Noroeste, Beyond
Pesticides, Teamsters Local 890, and Farm Labor
Organizing Committee, AFL-CIO*

1 MICHAEL MEUTER (CSB #161554)
2 JONATHAN GETTLEMAN (CSB #243560)
3 California Rural Legal Assistance, Inc.
4 3 Williams Road
5 Salinas, CA 93905
6 (831) 757-5221
7 (831) 757-6212
8 mmeuter@crla.org
9 jgettleman@crla.org

Attorneys for Plaintiff Luis Garcia Lopez